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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/727,769	12/04/2003	Noel Mascarenhas	06078/231001	7590

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EXAMINER

STERLING, AMY JO

ART UNIT PAPER NUMBER

3632

DATE MAILED: 07/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/727,769

Applicant(s)

MASCARENHAS ET AL.

Examiner

Amy J. Sterling

Art Unit

3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 16 and 17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 May 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>6/7/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This is a non-final Office Action for application number 10/727,769 Swing Down Fuel Tank Bracket, filed on 12/4/03. Claims 1-23 are pending. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/15/06 has been entered.

Claim Objections

The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 22 and 23 been renumbered 16 and 17.

Election/Restrictions

Newly submitted claims 16 and 17 (renumbered claims 22 and 23) are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The gas spring containing a motion damper and the hydraulic device are considered separate inventions than a gas spring. The examiner will rejoin claims if the applicant will insert a statement that admits that these devices are obvious permutations of the gas spring. The claims are considered withdrawn in this action.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 16 and 17 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Specification

The disclosure is objected to because of the following informalities:

The specification changes to paragraph 0048 contain the term “damper” and “dampener” and it unclear if these are intended to refer to the same device.

Appropriate correction is required.

Drawings

The drawings were received on 5/15/06. These drawings are acknowledged and accepted.

Claim Rejections - 35 USC § 112

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The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 15 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The specification does not adequately teach the “means for damping”. The term “means for damping” is not disclosed by the specification in such a way to convey what the term “means” entails.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 15 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 15 recite a “means for damping” and it is unclear as to which element this limitation is referring.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-7, 9 and 11-15 are rejected under 35 U.S.C. 102(b) as being anticipated by United States Patent No. 6637706 to Kim et al.

The patent to Kim et al. discloses a single stage swing down fuel bracket having a frame means (10) immovably mounted onto a fork lift vehicle (2), a cradle (20) or support means operatively connected substantially parallel to a counterweight the frame (10), a hinge (16, 32) or rotational means that pivotally connects a first end of the cradle to a first end of the frame and a latch (18, 0) or means for releasably engaging having a first portion (18) disposed on a second end of the frame and a second portion (70) disposed on a second end of the cradle, wherein the first portion of the latch is releasably engaged to the second portion of the latch, wherein after the latch is disengaged, the cradle is rotatable between a retracted position and an extended position in single stage such tht the second end of the cradle traverses an uninterrupted arcuate path, and wherein the cradle may be maneuvered between the retracted position and extending position by simultaneously rotating outwardly and downwardly in relation to the vehicle, the cradle (20) being positioned at an angle to a side surface of the counterweight. Kim et al. also teaches a gas spring (50) or means for balancing a rotation of the means for supporting, having a first end operatively connected to the frame, and a pivot screw operatively connected a second end of the gas spring to the first end of the cradle, the gas spring providing a near full assist for maneuvering and resisting motion of the cradle, with a second latch (64), a set of straps (46a) operatively

coupled to the cradle and arranged to be releasably engaged around a circumference of the fuel tank, and a dampener (40a) or means for damping between the frame and the cradle.

Claims 1, 8 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by United States Patent No. 5845940 to Colburn.

Colburn teaches a frame (26) immovably mounted on a vehicle, a cradle (64) operatively connected to the frame, a hinge (46) that pivotally connected a first end of the cradle to a first end of the frame and a latch (52) having a first portion disposed on a second end of the frame and a second portion disposed on a second end of the cradle, wherein the first portion of the latch is releasably engaged with the second portion of the latch, wherein after the latch is disengaged, the cradle is rotatable between a retracted position and an extended position in a single stage such that the second end of the cradle traverses an uninterrupted arcuate path, wherein the cradle may be maneuvered between the retracted position and the extended position by simultaneously rotating outwardly and downwardly to an angle of about 40 degrees in relation to the vehicle and an alignment pin (42).

Response to Arguments

With regards to the rejections under 35 USC 112, the specification fails to clearly describe as to which elements are considered to fall within the means for dampening.

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The applicant has argued that neither Colburn or Kim et al. teach "a cradle that is rotatable between a retracted position and an extended position in a single stage such that the second end of the cradle traverses an uninterrupted arcuate path" (claim 1). This is unpersuasive in that both references show that at least a portion of the path that is traced by the second end of the cradle is an uninterrupted arc.

Conclusion

Any inquiry concerning this communication should be directed to Amy J. Sterling at telephone number 571-272-6823. The examiner can normally be reached (M-F 8 a.m.-5:00 p.m.). The fax machine number for the Technology center is 571-273-8300 (formal amendments) or 571-273-6823 (informal amendments only). Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center receptionist at 571-272-3600.



Amy J. Sterling
Primary Examiner
7/5/06